IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.29486 of 2006
and
M.P.No.1 of 2006

S.Seethalakshmi

... Petitioner

Vs.

1. The Chief General Manager,
Maintenance,
Southern Telecom Region, BSNL,
Iind Link Road, Ganapathy Colony,
Thiru Vi.Ka.Nagar, Guindy,
Chennai-600 032.

2. The General Manager (Maintenance)
STR, BSNL, 5th Floor,
Telecom Building,
Flower Bazaar,
Chennai 600 001.

3. The Deputy General Manager (Maintenance)
STR, BSNL, 6th Floor, Telecom Building,
Flower Bazaar,
Chennai 600 001.

... Respondents

PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 29.03.2006 vide Letter No.CGM/STA/PT/SDE/ 2005-2006/51 made by the respondents herein and quash the same and direct the respondents to retain the petitioner at Salem.

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For Petitioner : Mr.P.K.Rajagopal for M/S.Lakshmi Associater

For Respondents: Mr.K.Anbarasan, BSNL

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O R D E R

This writ petition is filed challenging the impugned order of the General Manager (TS) passed for and on behalf of the first respondent dated 29.03.2006 under which, the petitioner, who is in the cadre of Sub Divisional Engineer in Tamil Nadu is transferred from Salem to Dharmapuri. The said transfer order is challenged by the petitioner working as a Sub Divisional Engineer in the Digital Transmission Center, Salem since 05.01.2003, on the ground that the same has been passed without considering the representation of the petitioner, especially, when she has undergone treatment for severe back and neck pain at Salem and her husband after working for a long time outside Salem was transferred to Salem and joined with the family only in the year 2006.

2. On the other hand, the respondents have filed the counter affidavit stating that the petitioner has continued in Salem for more than 26 years in various cadres and as an experienced technical person, required at the various places like Kodaikanal, Rameswaram and Dharmapuri and considering the request of the petitioner, she was given the nearest station namely Dharmapuri, since her services are required in Dharmapuri Optical Fibre Station. It is also the case of the respondents that the similar order of transfer have been effected not only in the case of the petitioner but also in respect of others also as it is seen in the impugned order itself. Therefore, according to the respondents, it cannot be considered as arbitrary. It is also the case of the respondents that nobody can be posted in a particular place permanently and the transfer is an incident of service. It was only after considering the representations, the petitioner was given nearest station at Dharmapuri.

3. Mr.P.K.Rajagopal, learned counsel appearing for the petitioner would submit that among the 5 persons who were transferred under the impugned order dated 29.03.2006, the first person V.Barani who was transferred to Kodaikanal, was posted to Virudhunagar at her request. In respect of K.Santharam who was transferred from Madurai to Rameswaram, on his representation that he met with an accident, the transfer order was not implemented and he was not relieved from Madurai. In respect of Mrs.S.Hema who was transferred from Trichy to Tiruvannamalai, she was also retained in Trichy, since her promotion was expected in December and the department has decided not to pay the transfer benefit to the officer after her promotion, which was to take place in a short span of time and therefore, she was also not relieved and was retained in Trichy. In respect of N.Balakrishnan who was transferred from Vellore to Myladuthurai, he was also retained in Vellore on his request that he was

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suffering from renal problem.

4. Therefore, according to the learned counsel, it is only the petitioner's claim which was not considered by the respondents while all other persons, who were transferred in the impugned transfer order have been either retained or posted to nearer place at request. Therefore, according to the learned counsel for the petitioner, even though the 5 persons were transferred under the impugned order, except the petitioner all other persons were retained and therefore, non consideration of the petitioner is grossly arbitrary and illegal, especially when the petitioner has raised the medical ground and also human consideration.

5. On the other hand Mr.K.Anbarasan learned counsel appearing for the respondents would submit that the impugned order is only administrative in nature and especially in the circumstance that no malafide is attributed to any one, it is the duty of the petitioner to obey the order of transfer. According to him, even though it is admitted that in respect of other 4 persons, their individual cases were considered and they were either retained or retransferred to some other place at their request, the petitioner cannot claim it as matter of right. According to him, it is only considering the difficulties of the petitioner, she was posted to a nearer place from Salem to Dharmapuri.

6. I have heard the learned counsel for the petitioner as also the learned counsel appearing for the respondents and also perused the records.

7. The admitted fact is that out of the 5 persons who were transferred under the impugned order, 4 persons are retained on various grounds including the medical grounds and also on request. It is seen that the petitioner has been making many representations including the one on 31.03.2006 and 14.08.2006, giving reasons that she is undergoing treatment under a Neuro surgeon at Salem, apart from stating that her husband who was away from family from 1998, has got transferred to Salem in June 2006. While admittedly, as seen in the copy of the order filed by the respondents produced by the learned counsel, in respect of 4 persons various orders have been passed by retaining them by considering their representations. The order which has been produced by the learned counsel for the respondent is extracted below:

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"The transfer order in respect of the following officers were not implemented / cancelled for the reasons specified against each.

Name	Designation/ Station	Reasons
1.Smt.V.Barani	SDE Madurai	One SDE from Virudhunagar was posted to Kodaikanal and hence the request of Smt.V.Barani was complied with and posted to Virudhunar.
2.Sri.K.Sandarum	SDE Madurai	Represented that he met with an accident and currently not in a position to move out on transfer. Considering genuineness of the case, transfer not implemented for the present.
3.Smt.Hema	SDE Trichy	After the issuance of the transfer order, we came to understand that promotion order to the cadre of DE is expected in the month of December. She is also due for promotion as DE. Under these circumstances, if she is posted to Thiruvannamalai, Department has to pay transfer benefits to the officers and also for the subsequent transfer from Thiruvannamalai, to some other place since there is no Divisional Engineer post is justified at Thiruvannamalai.
4.Sri.N.Bala krishnan	SDE Vellore	Represented that he has a chronic renal problem and on treatment at Vellore. Being a genuine case, the order was cancelled."

8. Therefore, it is clear that the respondents have considered the cases of other individuals, who are forming part of the impugned order, while there is absolutely nothing to show as to whether they have considered the claim of the petitioner at all. It is also seen that the petitioner has enclosed the various medical certificates to show her inability to join. In the circumstances stated above, especially when similarly situated persons were considered and retained on their representations, fairness only requires the respondents to take into consideration, the representation of the petitioner also, in order to avoid any arbitrariness in effecting transfers.

9. This I am insisting because normally it is settled position that transfer is incident of service and the court will not normally interfere

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by exercising its powers under Article 226 of the Constitution of India except directing to consider the representation after the transferred employee joined in the transferred place. In the present case as I have stated above, by the subsequent development, there is certainly force in the argument of the learned counsel for the petitioner that the claim of the petitioner has not been considered in its proper perspective.

10. In view of the same the writ petition is disposed with a direction to the respondents to consider the claim of the petitioner as it is seen in the representation of the petitioner dated 31.03.2006 and 14.08.2006 and pass appropriate orders taking into consideration the medical ground raised by the petitioner and such order shall be passed within a period of 4 weeks from the date of receipt of the copy of the order, making it clear that in the mean time the impugned order of transfer in respect of the petitioner shall not be given effect to. No Costs. Consequently, the connected M.P. is closed.

nbj

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,
1.The Chief General Manager,Maintenance,
Southern Telecom Region, BSNL,IInd Link Road,
Ganapathy Colony, Thiru Vi.Ka.Nagar, Guindy,
Chennai - 600 032.

2. The General Manager (Maintenance) STR,BSNL,
5th Floor, Telecom Building, Flower Bazaar,
Chennai 600 001.

3. The Deputy General Manager (Maintenance)
STR, BSNL, 6th Floor, Telecom Building,
Flower Bazaar, Chennai - 600 001.

+1 cc to Mr.P.K.Rajagopal,Advocate Sr.2281

+1cc to Mr.K.Anbarasan,Advocate Sr.1923.

MM (CO)
dcp/23.1.07

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